

REMARKS

Applicant has carefully studied the Office Action of July 28, 2005 and offers the following remarks in response thereto.

Claims 1-19, 36-45, and 52-69 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of co-pending Application No. 09/431566 (hereinafter "566 application"). Applicant herein acknowledges this provisional rejection. As neither application has an indication of allowable subject matter, it is premature to comment on this provisional rejection. In the event that one or the other application is allowed, Applicant will address this provisional rejection at that time.

Claims 1, 7, 36, 40, 52, 55, 60-62, 64, and 65 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss et al. (hereinafter "Inniss") in view of Wert. Applicant respectfully traverses. If the combination of two references makes one of the references unsuitable for its intended purpose, then the combination is non-obvious. MPEP § 2143.01.

The Patent Office admits that Inniss does not teach network announcements and relies on Wert to show network announcements. Part of the reason Inniss does not teach network announcements is that Inniss's purpose is to allow users to automate their use of voicemail. (see Inniss col. 2, lines 11-19). More specifically, Inniss's object is to permit "a user to selectively designate pre-recorded audio messages for distribution with a primary message which permits a recipient to request a selected distribution of pre-recorded messages from the originator." (Inniss, col. 2, lines 31-36). If Wert's network announcements are inserted into the Inniss system, Inniss is no longer capable of sending the pre-recorded voice-mails which are the stated purpose of Inniss. Thus, combining Wert and Inniss makes Inniss unsuitable for its intended purpose and the combination of Inniss and Wert is non-obvious. Since the combination of the two references is non-obvious, the rejections based on the combination are improper. Therefore, applicant requests withdrawal of the § 103 rejection of claims 1, 7, 36, 40, 52, 55, 60-62, 64, and 65 at this time.

Applicant further traverses the motivation to combine the references. Specifically, there must be some suggestion to combine the references. MPEP § 2143.01. The Patent Office asserts that the motivation to combine the references is to allow delivery of network announcements on a real time basis, citing Wert, col. 2, lines 41-43 (see Office Action of July 28, 2005, page 6, lines 3-6). However, this asserted motivation does not compel the combination. Rather,

someone seeking to deliver network announcements would find Wert and have a solution to their need for real time delivery of network announcements. Thus, the need for real time delivery of network announcements does not compel the combination, but merely results in the usage of Wert. To this extent, the Patent Office's asserted motivation to combine the references is improper. Since the motivation to combine the references is improper, the combination is improper. Since the combination is improper, the rejections based on the combination are improper. Applicant requests withdrawal of the § 103 rejection of claims 1, 7, 36, 40, 52, 55, 60-62, 64, and 65 at this time on this basis as well as the previous.

Claims 2-4, 10, 11, 37, 38, 53, 54, and 56 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss in view of Wert and further in view of Arango et al. ("Media Gateway Control Protocol, XP-002278702, hereinafter "Arango"). Applicant respectfully traverses. The standards for combining references are set forth above.

Applicant initially traverses the rejection for the reasons set forth above. Specifically, the combination of Inniss and Wert is improper for at least two reasons. The addition of Arango does not cure the deficiencies of the underlying combination, and thus, this rejection is improper for both reasons as well.

Applicant further traverses the rejection because the motivation asserted by the Patent Office to combine Arango does not compel the combination. Specifically, the Patent Office asserts that the motivation to add Arango is to provide conversion between the audio signals carried on the telephone circuits and data packets carried over the Internet or other packet networks. (See Office Action of July 28, 2005, page 8, lines 5-7). If someone needed to convert audio signals to data packets, she would arrive at Arango and stop because Arango solves this problem. That person would not need to add Inniss and Wert to Arango to convert audio signals to data packets. Thus, the asserted motivation does not compel the combination of Arango with Inniss and Wert.

Since the asserted motivation does not compel the combination of Arango with Inniss and Wert, the combination of the three references is improper. Since the combination of the three references is improper, the rejection based on the combination is improper. Applicant requests withdrawal of the rejection of claims 2-4, 10, 11, 37, 38, 53, 54, and 56 on this basis also.

Claims 5, 6, 12-19, 39, 43-45, 59, 63, and 66-69 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss in view of Wert and further in view of Nimphius. Applicant respectfully traverses. The standards for combining references are set forth above.

Applicant traverses the rejection for the reasons set forth above. Specifically, the combination of Inniss and Wert is improper for at least two reasons. The addition of Nimphius does not cure the deficiencies of the underlying combination and thus this rejection is improper for both reasons as well.

Claims 8, 9, 41, 42, 57, and 58 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss in view of Wert and further in view of Barbara et al. (hereinafter "Barbara"). Applicant respectfully traverses. The standards for combining references are set forth above.

Applicant traverses the rejection for the reasons set forth above. Specifically, the combination of Inniss and Wert is improper for at least two reasons. The addition of Barbara does not cure the deficiencies of the underlying combination and thus this rejection is improper for both reasons as well.

Applicant respectfully requests reconsideration of the rejections in light of the remarks presented herein. The combination of references makes one of the references unsuitable for its intended purpose, and thus the combinations are non-obvious. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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